

STATE OF MAINE  
SUPREME JUDICIAL COURT DOCKET NO. BAR-06-3

BOARD OF OVERSEERS OF THE BAR )  
 )  
 Plaintiff ) DECISION AND  
 ) ORDER  
 v. )  
 )  
 BRIAN D. CONDON, JR., ESQ. )  
 of WINTHROP, ME )  
 Me. Bar #8588 )  
 Defendant )

This matter came before the Court upon the filing of an Information by the Board of Overseers of the Bar. The Board was represented by Bar Counsel J. Scott Davis, and Deputy Bar Counsel Nora Sosnoff and Attorney Brian D. Condon, Jr., Esq. was represented by Attorney Karen G. Kingsley. The Court heard testimony from Attorney R. Howard Lake and Attorney Condon. Following the hearing, the parties by agreement, offered the Disciplinary Petition with attachments. Because the attachments contain attorney-client confidential material, at the request of the parties, they were received under seal. The Court makes the following findings:

### **FINDINGS OF FACT**

1. Attorney Condon has practiced law in Maine since his admission to the Maine Bar in 1997 and from 2002 until March 7, 2005, was a partner at the law firm of Hufnagel, Lake & Condon (HLC);

2. Like most Maine law firms, HLC kept a pooled client trust account with detailed client records. At HLC, these client records were made and retained on a computer-based accounting program called “Quickbooks”;

3. On or about March 10, 2004, Attorney Condon received from an insurance company a settlement check for Client A for \$2547.95 with instructions to hold and not deposit the check until Attorney Condon’s client had signed a release. Although Client A had not signed a release, Attorney Condon deposited the check in the HLC pooled client trust account in a subaccount attributable to Client A. Then, still without a release from Client A, on August 26, 2004, in violation of the insurer’s terms of settlement, Attorney Condon paid the firm \$400 in legal fees from the sub-account attributable to Client A;

4. Although Attorney Condon attributes this to an unintended clerical error, the Court is satisfied that sometime between mid-September and early October 2004, Attorney Condon manipulated the “Quickbooks” accounting program to change the name on the trust sub-account from Client A to Client B and

change the source of those funds from an insurance company to the law firm to whom Attorney Condon had previously referred Client B to handle his personal injury claim.

5. On December 6, 2004, the firm to whom Client B had been referred sent Attorney Condon \$1111.11 as a referral fee (i.e., one-third of the one-third of the \$10,000 settlement negotiated for Client B). Rather than deposit the sum in the firm's general account as income, Attorney Condon directed his secretary to "please deposit (the check). . . in (Client B) Trust Account." With that deposit the sub-account in the name of Client B totaled \$3259.06 (i.e., \$2547.95 minus \$400, plus \$1111.11);

6. Attorney Condon admits that on December 10, 2004, he caused a check to be drawn on HLC's trust account payable to Client B and that he deposited that check for \$3259.06 into Attorney Condon's personal checking account. Although he does not remember doing so, the Court is satisfied that Attorney Condon endorsed Client B's name to the back of the check. The funds neither belonged to Attorney Condon nor to Client B;

7. On January 25, 2005, Client A called HLC wanting to speak with Attorney Condon about his case. Within an hour of that call, the Court is satisfied that Attorney Condon, using an absent employee's password to gain access to the Quickbooks program, established a sub-account for Client A for \$2547.95

indicating the source of those funds was a law firm rather than the insurance company and reduced the size of another client's sub-account by \$2547.95;

8. When a month later Attorney Condon's manipulations began to be uncovered he first blamed the firm's staff. Only after viewing a videotape of him making the deposit into his personal checking account did he admit the deposit. He claims not to remember endorsing Client B's name on the back of the check and intimated at the hearing that a credit union teller may have done so.

9. Attorney Condon testified that he has recently been diagnosed with attention deficit disorder and is taking medication to help him "focus" and "operate in more of a controlled manner." While the Court is unqualified to assess whether this condition may explain his conduct, it is a working hypothesis.

### **CONCLUSIONS OF LAW**

Attorney Condon has violated the following provisions of the Maine Bar Rules: 3.1(a), 3.2(f)(1), 3.2(f)(3), 3.2(f)(4), 3.6(a), 3.6(e)(1), and 3.6(e)(2)(iii).<sup>1</sup>

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#### <sup>1</sup> **3.1 Scope and Effect**

(a) This Code shall be binding upon attorneys as provided in Rule 1(a). Violation of these rules shall be deemed to constitute conduct "unworthy of an attorney" for purposes of 4 M.R.S.A. § 851. . . .

#### **3.2 Admission, Disclosure and Misconduct**

(f) Other Misconduct. A lawyer shall not:

(1) directly or indirectly violate, circumvent, or subvert any provision of the Maine Bar Rules;

## **SANCTIONS**

It is well established that the main purpose of attorney discipline is not punishment, but protection of the public. “The purpose of [a bar disciplinary] proceeding is not punishment, but protection of the public and the courts from attorneys who by their conduct have demonstrated that they are unable, or likely to be unable to discharge properly their professional duties.” M. Bar R. 2(a) (Purpose of Rules). The Court has considered the purpose of bar disciplinary proceedings in imposing the sanction in this case and recognizes that no clients of Condon have

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(3) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(4) engage in conduct that is prejudicial to the administration of justice.

### **3.6 Conduct During Representation**

**(a) Standards of Care and Judgment.** A lawyer must employ reasonable care and skill and apply the lawyer’s best judgment in the performance of professional services. A lawyer shall be punctual in all professional commitments. A lawyer shall take reasonable measures to keep the client informed on the status of the client’s affairs. . . .

**(e) Preserving Identity of Funds and Property.**

(1) All funds of clients paid to a lawyer or law firm, other than retainers and advances for costs and expenses, shall be deposited in one or more identifiable accounts maintained in the state in which the law office is situated at a financial institution authorized to do business in such state. No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(2) A lawyer shall:

(iii) Maintain complete records of all funds, securities and other properties of a client coming into possession of the lawyer and render prompt and appropriate accounts to the client regarding them;

joined in this grievance and he has no previous disciplinary record with the Board or this Court.

To the extent that he has accepted responsibility for his actions, Condon has apologized to the Court, to the administrative staff at HLC, and to his former law partner, R. Howard Lake, Esq. Condon has affirmed that he will make every effort to ensure that no future violations of any Bar Rules occur.

Accordingly, the Court HEREBY ORDERS that Brian D. Condon, Jr. be and hereby is suspended from the practice of law in Maine for a period of one year commencing January 1, 2007, with all but the second fifteen (15) days of that suspension itself being suspended subject to the following terms and conditions:

a) Prior to his returning to active practice any time after February 1, 2007, at his own expense, Attorney Condon shall enter into a monitoring agreement with the Maine Assistance Program for Lawyers and Judges (MAP) in a form acceptable to Bar Counsel and the Director of MAP, and shall undergo assessment, testing, and treatment, all to the satisfaction of the Director of MAP;

b) Prior to his returning to active practice any time after February 1, 2007, Attorney Condon will have identified a local lawyer, approved by the Director of MAP, who will agree to monitor Attorney Condon's practice by reviewing an inventory list of his files, trust account activity, and be available to speak with

Attorney Condon and vice versa on a regular basis, but at least once per month about any problems or issues with the practice;

c) Attorney Condon will continue his treatment for ADD, and will sign whatever releases are necessary so that his treatment provider will be able to speak with the Director of MAP;

d) In the event any new grievance complaint is received by Bar Counsel prior to January 1, 2008, concerning alleged misconduct by Attorney Condon such complaint shall be processed under either Bar Rule 7.1(c) or 7.1(d), as appropriate, but in the event a preliminary review panel finds probable cause of misconduct under Bar Rule 7.1(d)(5), the matter shall then be filed directly in the Court under Bar Rule 7.2(b); and

e) Any apparent violation of the conditions of this Order shall be brought to the attention of the Court by Bar Counsel.

Dated: December 27, 2006

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Howard H. Dana, Jr.  
Associate Justice  
Maine Supreme Judicial Court